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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,643

12/28/2005

Ichiro Takeda

030685-052

3704

55694 7590 08/13/2008  
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EXAMINER

NIESZ, JASON KAROL

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

08/13/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,643	<b>Applicant(s)</b> TAKEDA ET AL.	
	<b>Examiner</b> JASON K. NIESZ	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05/01/2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)              |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application    |
| Paper No(s)/Mail Date <u>05/01/2008</u> .  | 6) <input checked="" type="checkbox"/> Other: <u>JP-2001-72189</u> . |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 05/01/2008 is being considered by the examiner.

### ***Specification***

2. The disclosure is objected to because of the following informalities: page one of the specification ends with the line "and/or methods constitute prior art. Applicant expressly reserves the right to", page two also begins with this line. It was obviously copied twice in error.
3. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. In Re all claims pending in this action the examiner notes that a method is considered anticipated if a prior art device would, in the course of ordinary use and operation, necessarily perform the method (MPEP 2112.02).
6. Claims 1, 3, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Gustavsson et al. (US Patent 5,908,651).

In Re claims 1 and 9 Gustavsson with reference to Figure 1 discloses a method in which liquid is delivered from a storage tank (12) (Column 3, line 8) into a filler tank

(26) (Column 3, line 38) from which said liquid is filled into containers (Column 3, lines 38-40), the liquid in said filler tank being returned through return piping (32) (Column 3, lines 45-50) to said storage tank.

In Re claims 3 and 11 Gustavsson discloses the carrying out of said refluxing during filling (Column 3, lines 44-45).

7. Claims 1, 3, 4, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 21, 22, 24, 28 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Publication 2001-72189 (hereinafter referred to as JPP).

Re claims 1, 4, 9 and 12 JPP with reference to Figure 1 discloses a method in which liquid is delivered from a storage tank (4) (Paragraph 10) through a heat sterilizer (8)(Paragraph 10) into a filler tank (22) (Paragraph 11) from which said liquid is filled into containers (Paragraph 11), the liquid in said filler tank being returned through return piping (32) (Paragraph 12) through a cooler (16)(Paragraph 12) to said storage tank.

In Re claims 3, 6, 11, 14 and 18 JPP discloses refluxing said fluid during suspension of filling (Paragraph 25).

In Re claims 7, 15, 19, 21 and 28 JPP discloses the use of a level sensor in tank 22 (Paragraph 18) through which volume is detected and surplus volume made to flow back into the supply tank (Paragraph 18) thereby limiting the flow into filler tank 22.

In Re claims 8, 16, 22, 24 and 31 JPP discloses a method in which fluid is directed from filler tank 22 through valve 30 to filler 24 during filling(Paragraph 11), causing a the amount of fluid returned through line 32 to be smaller than the amount supplied to tank 22. Furthermore JPP discloses a method wherein the fluid from tank

22 is directed by valve 30 entirely through the return line 32 during a period of suspension of filling (Paragraphs 24 and 25). The examiner notes that this causes filler tank 22 to return 100% of the fluid provided to it during this period of suspension of filling.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2, 5, 10, 13, 17, 20, 23, 25, 26, 27, 29, 30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over JPP in view of Catelli (US Patent 4,809,595).

In Re claims 2, 5, 10, 13, 17, 20, 23, 25, 26, 27, 29, 30 and 32 JPP discloses all limitations but doesn't disclose a beverage containing a solid component. Catelli discloses the bottling of a mixture of juice and pulp (Column 1, lines 32-36). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the sterilizing and bottling method from JPP to sterilize and bottle the juice from Catelli, in order to prepare the product for distribution.

8. Claims 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over JPP in view of Japanese Patent Unexamined Publication No. Hei 6-293302 (JPP2).

9. In Re claim 33 JPP as applied to claim 1 above discloses all the limitations but doesn't disclose a portion of the liquid in the filler tank being constantly refluxed to the storage tank. JPP2 as described in paragraph 6 on Page 4 of the instant application

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discloses a liquid recirculating path designed to keep constant a solid component in a beverage to be dispensed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to allow a portion of the liquid in the fill tank in JPP to recirculate at all times during filling, in order to keep the solid component of a multiple component beverage from settling out.

10. In Re claim 34 JPP as applied to claim 4 above discloses all the limitations but doesn't disclose a portion of the liquid in the filler tank being constantly refluxed to the storage tank. JPP2 as described in paragraph 6 on Page 4 of the instant application discloses a liquid recirculating path designed to keep constant a solid component in a beverage to be dispensed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to allow a portion of the liquid in the fill tank in JPP to recirculate at all times during filling, in order to keep the solid component of a multiple component beverage from settling out.

11. In Re claim 35 JPP as applied to claim 9 above discloses all the limitations but doesn't disclose a portion of the liquid in the filler tank being constantly refluxed to the storage tank. JPP2 as described in paragraph 6 on Page 4 of the instant application discloses a liquid recirculating path designed to keep constant a solid component in a beverage to be dispensed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to allow a portion of the liquid in the fill tank in JPP to recirculate at all times during filling, in order to keep the solid component of a multiple component beverage from settling out.

12. In Re claim 36 JPP as applied to claim 12 above discloses all the limitations but doesn't disclose a portion of the liquid in the filler tank being constantly refluxed to the storage tank. JPP2 as described in paragraph 6 on Page 4 of the instant application discloses a liquid recirculating path designed to keep constant a solid component in a beverage to be dispensed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to allow a portion of the liquid in the fill tank in JPP to recirculate at all times during filling, in order to keep the solid component of a multiple component beverage from settling out.

***Response to Arguments***

13. Applicant's arguments filed 05/01/2008 have been fully considered but they are not persuasive.

In Re the argument in the first paragraph on Page 13, during filling the Gustavsson apparatus returns product to the storage tank (12) through an overflow line (32) which is connected through the overflow tank and the filler to the filler tank (25) (Column 3, lines 35-50). The fact that the apparatus functions in an alternate manner after a production run is not relevant.

In Re the argument in the second paragraph on Page 13, a prior art apparatus must disclose the same structure as claimed apparatus, but must merely be capable of functioning in the claimed manner to anticipate an apparatus claim. Furthermore, the Gustavsson circulates liquid in at least a portion of the filling line constantly during operation. The fact that the liquid is not circulated when the apparatus is not filling is not relevant to the rejection. The fact that liquid is circulated constantly for a time is

enough to anticipate the claim. Clearly the applicant's invention does not circulate fluid constantly for an infinite period of time. The applicants stated benefit of being able to resume operation after an interruption is not relevant because it is not claimed.

In Re the argument in the third paragraph on Page 13, the Gustavsson device as disclosed above in Re earlier arguments performs the claimed method during ordinary use and operation.

In Re the argument in the third paragraph on page 15, the JPP reference through the use of the 2nd Dibbah John circuit acts to circulate liquid through the entire filling line through the use of a line 32 which connects to the filler tank (22) and the storage tank (4). Furthermore, claim 9 does not claim the fluid circulating constantly in the return line, but only in the filling line. JPP is clearly capable of circulating the liquid constantly in at least a portion of the fill line.

In Re the argument in the first paragraph on Page 16, the JPP device as disclosed above in Re earlier arguments performs the claimed method during ordinary use and operation.

### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within



TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON K. NIESZ whose telephone number is (571)270-3920. The examiner can normally be reached on mon-fri 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason K Niesz/

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Examiner  
Art Unit 3751

/Gregory L. Huson/  
Supervisory Patent Examiner, Art Unit 3751